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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,725	03/11/2004	Jeffrey George Orr	1047-139.US	4989

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EXAMINER
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THOMSON, MICHELLE R

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 04/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/798,725

**Applicant(s)**

ORR, JEFFREY GEORGE

**Examiner**

Michelle (Shelley) Thomson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date. _____  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Drawings***

1. Figure 1 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g).
2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 166
3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character “84” has been used to designate both “safety catch aperture” and actuating rod aperture”.
4. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

5. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Where the written description only implicitly or inherently sets forth the structure, materials, or acts corresponding to a means-plus-function, applicant must clarify the disclosure to explicitly state, with reference

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to the terms and phrases of the claim element, what structure, materials, or acts perform the function recited in the claim elements and **equivalents thereof**. (See MPEP 2181). Correction of the following is required: applicant must clarify the disclosure to explicitly state, with reference to the terms and phrases of the claim element, what **structure, materials, or acts** perform the pivot connection means and rod connection means recited in the claim elements and equivalents thereof.

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 2 and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. Regarding claim 2, the word "means" is preceded by the word(s) "ramp" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

9. Claim 23 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 23 recites the limitation "a trigger assembly" (as claimed in claim 11). Claim 11 is directed toward a trigger frame not a trigger assembly; it is not clear to the examiner what "trigger assembly" applicant is referring to.

### ***Double Patenting***

10. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

11. Claim 9 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 1 of prior U.S. Patent No. 6705036. This is a double patenting rejection.

12. Claim 15 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 10 of prior U.S. Patent No. 6705036. This is a double patenting rejection.

13. Claims 20-22 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 19-21 respectively of prior U.S. Patent No. 6705036. This is a double patenting rejection.

14. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

15. Claims 1-8 and 10 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of U.S. Patent No. 6705036. Although

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the conflicting claims are not identical, they are not patentably distinct from each other because eliminating an element therefore requiring less structure would be obvious.

16. Claims 11-14, 16, and 23 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 10-18 of U.S. Patent No. 6705036. Although the conflicting claims are not identical, they are not patentably distinct from each other because eliminating an element therefore requiring less structure would be obvious.

17. Applicant is advised that should claim 16 be found allowable, claim 23 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

***Claim Rejections - 35 USC § 102***

18. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

19. Claims 1, 3, 6 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Wohrstein (US Patent # 4,067,309). Wohrstein discloses a trigger mechanism comprising a body portion (reference 31), a pivot point (i.e. pivot connection means) (reference 30) comprising an aperture extending through the body portion (Figure 6), a lever extending from the body portion (reference 32), an engagement portion (reference 40) associated with the body portion and an arm (i.e. rod connection means) (reference 37) associated with the body portion wherein the

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pivot point and the rod connection means are substantially vertically aligned with each other (Figures 3 and 6). The distance between the pivot point and the engagement portion is configured so that the firing mechanism will be initiated when the trigger has been pulled a predetermined distance (column 5, lines 30-51).

20. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Baker (US Patent # 2,466,196). Baker discloses a trigger (reference 16) comprising a body portion (Figures 1-3) comprising a central portion having a pivot connection means (reference 17) on the central portion of the body portion comprising an aperture extending through the body portion, a lever (reference 18) extending from the body portion, an engagement portion (reference 31) associated with the body portion providing a surface for engaging a sear (reference 9), and a head portion (reference 21) having a rod connection means (reference 23) comprising an aperture in the body portion.

21. Claims 11, 12, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Chesnut et al. (US Patent # 5,149,898). Chesnut et al. discloses a fire control assembly including a trigger frame (reference 14) comprising a body having a cavity therein (reference 110), a handle connected to the body, a trigger guard on the body, the trigger guard and body defining a space with which a portion of the cavity is in communication (Figures 1 and 8a), a connection member on the body comprising apertures and a pivot pin (references 180 and 182), a portion of the trigger being located in the cavity and another portion of the trigger extending from the cavity into the space defined by the trigger guard, a slot member on the body (reference 192) and abutment surfaces within the cavity. The trigger frame comprises a safety catch (reference 22), which is positioned on the body and comprises at least one aperture in the body and a catch

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member movably mounted within the aperture and extending through the cavity and movable between a lock position and an unlocked position (column 8, lines 46-53).

***Claim Rejections - 35 USC § 103***

22. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

23. Claim 7 rejected under 35 U.S.C. 103(a) as being unpatentable over Wohrstein.

Wohrstein discloses the claimed invention except for the pivot point and rod connection means being approximately 0.625 inches apart. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make them 0.625 inches apart, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

24. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wohrstein as applied to claim 1 above, and further in view of Hsueh (US Patent # 6,347,622). Although Wohrstein does not expressly disclose the lever being sufficient length so that at least two fingers of the user can be wrapped around the arm, Hsueh does. Hsueh teaches a trigger having an extended lever so that a shooter can use at least two fingers for ease of operation. Hsueh and Wohrstein are analogous art because they are from the same field of endeavor: trigger mechanisms. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the extended trigger as taught by Hsueh with the trigger



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mechanism of Wohrstein. The suggestion/motivation for doing so would have been to obtain a trigger that was easier to operate.

### ***Conclusion***

25. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Krouse (US Patent # 4,727,670), Shipachev et al. (US Patent # 6,494,194), Lacam et al. (US Patent # 4,602,608), Perrone (US Patent # 5,634,456), Kutrubes (US Patent # 6,189,525), Keeney (US Patent # 5,718,074), Curran (US Patent # 4,173,964), and Casas Salva (US Patent # 5,884,615).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle (Shelley) Thomson whose telephone number is 571.272.6884. The examiner can normally be reached on Monday thru Thursday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 703.306.4198. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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